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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 EMPLOYEE PAINTERS TRUST
10 HEALTH & WELFARE FUND, et al.,

11 Plaintiffs,

12 v.

13 BORDERS PAINTING &
14 WALLCOVERING CO., LLC, et al.,

15 Defendants.
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CASE NO. C07-1994JLR

ORDER

17 This matter comes before the court on Plaintiffs' unopposed motion for summary
18 judgment (Dkt. # 15). The court has reviewed the papers submitted by Plaintiffs and for
19 the reasons that follow orders the following: the clerk is directed to enter default against
20 Defendant Borders Painting & Wallcovering Co., LLC ("Borders Painting"); the case is
21 stayed as to Defendants John E. Borders, Barbara Borders and Rose M. Duvall; and the
22 motion for summary judgment is GRANTED as to Defendants Borders Painting and
23 James R. Borders and is DENIED without prejudice as to the remaining Defendants.
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25 **I. BACKGROUND**

26 This action was filed on December 13, 2007. The Defendants filed an answer on
27 March 14, 2008 generally denying the allegations in the complaint. On March 20, 2008,
28 counsel for Defendants moved to withdraw. The court granted the motion on March 31,

1 2008, leaving Borders Painting unrepresented. The individual defendants elected to
2 proceed pro se. On June 12, 2008, Plaintiffs moved for summary judgment. As of this
3 date, the court has not received any response to this motion from any of the Defendants.
4 On June 24, 2008, Plaintiffs informed the court that Defendant Rose M. Duvall had filed
5 for bankruptcy and obtained an automatic bankruptcy stay pursuant to 11 U.S.C. § 362.
6 On July 18, 2008, Plaintiffs informed the court that Defendants John E. Borders and
7 Barbara M. Borders had filed for bankruptcy and also obtained an automatic bankruptcy
8 stay.

9 10 **II. ANALYSIS**

11 **A. Unrepresented Limited Liability Company**

12 The court directs the clerk to enter default against Defendant Borders Painting as it
13 cannot proceed before the court pro se. *See* Local Rules W.D. Wash. GR 2(g)(4)(B).

14 **B. Bankruptcy Stays**

15 As previously discussed, Plaintiffs informed the court that Defendants Rose M.
16 Duvall, John E. Borders and Barbara M. Borders have filed for bankruptcy and obtained
17 automatic stays pursuant to 11 U.S.C. § 362. Therefore, the court stays the proceedings
18 against these defendants.

19 **C. Motion for Summary Judgment**

20 Summary judgment is appropriate if the evidence, when viewed in the light most
21 favorable to the non-moving party, demonstrates there is no genuine issue of material
22 fact. Fed. R. Civ. P. 56(c)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v.*
23 *County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the
24 initial burden of showing there is no material factual dispute and he or she is entitled to
25 prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets its
26 burden, the nonmoving party must go beyond the pleadings and identify facts which show
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1 a genuine issue for trial. *Cline v. Indus. Maint. Eng'g. & Contracting Co.*, 200 F.3d
2 1223, 1229 (9th Cir. 2000).

3 Plaintiffs argue that there are no disputed facts. They assert that an authorized
4 agent for Borders Painting signed the Collective Bargaining Agreement (“CBA”) on July
5 1, 2007, and that Borders Painting failed to make all of the required employee benefit
6 contributions. (Mot. at 4.) In support of their argument Plaintiffs have attached a copy of
7 the CBA signed by John Borders on behalf of Borders Painting. (Declaration of David L.
8 Tuttle (“Tuttle Decl.”), Ex. A.) Article 10.1 of the CBA states: “Each Employer
9 signatory to this Agreement is required to make reports to the Trusts (see Article 20) and
10 remit with contributions, if any due, to Western Washington Painters Pension Trust.”
11 (*Id.*) Plaintiffs have also submitted evidence that John E. Borders was authorized to sign
12 the agreement on behalf of Borders Painting. (*See* Tuttle Decl, Ex. C.) Additionally,
13 Plaintiffs provided employer report forms demonstrating that Borders Painting failed to
14 make \$154,377.19 in contributions. (*See* Tuttle Decl., Ex. B.) The court finds that there
15 is no genuine issue of material fact that Borders Painting was obligated to make payments
16 to the trust funds and that it failed to pay \$154,377.19 in contributions and that
17 \$127,177.65 is currently due and owing.

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19 Plaintiffs also seek to hold John E. Borders, James R. Borders and Rose M. Duvall
20 personally liable for the outstanding employee benefit contributions. Plaintiffs cite a
21 provision contained in all of the Western Washington Painters Trust Fund Trust
22 Agreements that provides:

23 In recognition that individuals have responsibilities in a corporation which is
24 a participating Employer in a Trust, and that contributions are for the welfare
25 of covered employees, the responsible individuals in a corporation which is a
26 participating Employer shall be individually liable for payment of contributions
27 and other charges owing under this Article VIII. Therefore, in the event any
28 corporate participating Employer which is obligated to make contributions to
the Trust fails to make such contributions, the President, the Treasurer, and any
other corporate officer who is responsible for payment of contributions by the
corporation to the Trust Fund shall be each individually liable for the payment

1 of contributions and any other amount due under this Article VIII, and under
2 applicable Federal law, 29 U.S.C. Section 1132(g).

3 (Tuttle Decl., Ex. D.) These clauses are enforceable. *See Employee Painters' Trust v. J*
4 *& B Finishes*, 77 F.3d 1188 (9th Cir. 1996). John E. Borders, James R. Borders and Rose
5 M. Duvall are all members of Borders Painting & Wallcovering Co., LLC. (*See Tuttle*
6 *Decl., Ex. C.*) As the court has previously discussed, this action is stayed against John E.
7 Borders and Rose M. Duvall. The court finds that there is no genuine issue of material
8 fact that James R. Borders is personally liable for the contribution deficits as well as any
9 other charges or fees that accrued as a result of the failure to pay the contributions and
10 enters judgment against James R. Borders in the amount of \$127,177.65.

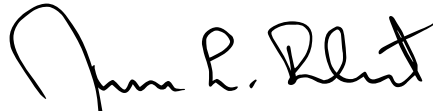
11 In addition to the unpaid trust obligations, Plaintiffs also assert that Borders
12 Painting and the individual defendants are obligated to pay liquidated damages, interest,
13 costs and reasonable attorney's fees. In support of their claim, Plaintiffs cite 29 U.S.C. §
14 1132(g)(2), the CBA and the provisions of the various trust agreements. (*See Tuttle*
15 *Decl., Ex. A, Second Declaration of David L. Tuttle (Dkt. # 24)* ("Second Tuttle Decl."),
16 *Ex. A.*) The court finds that there is no genuine issue of material fact that Borders
17 Painting and James R. Borders are liable for liquidated damages in the amount of
18 \$15,956.19, interest in the amount of \$9,246.83, costs of \$1,127.38 and reasonable
19 attorney's fees of \$9,320.75.

20 21 **III. CONCLUSION**

22 For the foregoing reasons, the clerk is directed to enter default against Defendant
23 Borders Painting; this case is stayed as to Defendants John E. Borders, Barbara Borders
24 and Rose M. Duvall; and Plaintiffs' motion for summary judgment is GRANTED against
25 Defendants Borders Painting and James R. Borders and is DENIED as to the remaining
26 defendants without prejudice.

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DATED this 28th day of July, 2008.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART
United States District Judge